

CHAPTER 8

ARTICLE 8 - DISCHARGE AND PARDON

Revised July 23, 2002

81080.1 Policy

A parolee may be recommended for discharge at any time when case factors or other considerations support early discharge. The factors to be considered are:

- First term with no prior convictions.
- Legally self-supporting or self-sufficient.
- Currently drug free.
- Stable residence.
- Effort to satisfy restitution obligations.

A parolee should be recommended for early discharge if:

- Parolee is under other supervision [e.g., probation, Federal probation, other prison system, Department of Mental Health (DMH) facility or long-term drug treatment program]; or
- Verifiable changes in physical abilities or health which are rendered no longer a danger to society; or
- Special circumstances (e.g., parolee's life in danger, job offer in another country).

81080.1.1 Annual Discharge Review Policy

Discharge review periods are specified in the Penal Code (PC). Discharge review periods and maximum parole jurisdiction, depending on date and type of commitment offense, are:

PAROLE AND REVOCATION PERIODS

Date of Commitment Offense	Type of Offense	Discharge Review	MaxiPeriod of Parole	Max Revocation Period *	Max Period of Parole Jurisdiction
Commitment Offense on or before 12-31-78	Life	None	3 years	6 months	4 years
Commitment Offense on or before 12-31-78	Non-Life	None	1 year	6 months	18 months
Commitment Offense on or after 1-1-79 but prior to 12-31-82	Life	During 37 th month of cont. parole	5 years	1 year	7 years
Commitment Offense on or after 1-1-79	Non-Life	During 13 th month of cont. parole	3 years	1 year	4 years
Commitment Offense on or after 1-1-83	Life (Murder 1 st Degree	Within 30 days of completion of 7 years cont. parole	Life	1 year	Life
Commitment Offense on or after 1-1-83	Life (Murder 2 nd Degree	Within 30 days of completion of 5 years cont. parole	Life	1 year	Life
Commitment Offense on or after 9-26-88	Violent Felony PC 667.5	Within 30 days of completion of 2 years cont. parole	3 yrs. or 5 yrs.	1 year	4 years or Life based on commitment offense

* Multiple revocation terms may be imposed

Continuous Parole

"Continuous parole" means the Board of Prison Terms (BPT) has not interrupted the parole period by suspending or revoking a parolee who has been found guilty of an offense. Suspended Parolee-at-Large (PAL) time does not count toward maximum time limits unless the BPT makes a good cause finding to exclude at-large time from the parole period.

The assigned parole agent shall review each case within the specified review period, and recommend either to retain the case on parole or allow the case to discharge by operation of law.

The following factors shall be considered in conducting discharge review:

- Commitment offense.
- Parole adjustment.
- Recent drug use.
- Restitution obligations.
- Stable residence and employment.
- Prior criminal history.

Report

A Discharge Review Report shall be prepared and submitted to the unit supervisor at least 20 days prior to completion of one, two, three, five, or seven years of continuous parole, based on commitment category, and at least 20 days prior to completion of each year of continuous parole thereafter.

Parolees committed to prison for a "violent felony," under PC 667.5(c), shall be referred to the BPT for discharge review.

"Violent felony" means any of the following:

- Murder or voluntary manslaughter.
- Mayhem.
- Rape as defined in PC 261, Subdivision 2.
- Sodomy by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- Oral copulation by force, violence, duress, menace, or fear of immediate and unlawful bodily injury on the victim or another person.
- Lewd acts on a child under 14 as defined in PC 288.
- Any felony punishable by death or imprisonment in state prison for life.
- Any other felony in which the defendant inflicts great bodily injury on any person other than an accomplice which has been charged and proved as provided for in PC 12022.7 or after July 1, 1977, or as specified prior to July 1, 1977, in PC 213, 264, and 261, or any felony in which the defendant uses a firearm in which use has been charged and proved as provided in PC 12022.5.
- Any robbery perpetrated in an inhabited dwelling house or trailer coach, as defined in the Vehicle Code, or in the inhabited portion of any other building, wherein it is charged and proved that the defendant personally used a deadly or dangerous weapon, as provided in subdivision (b) of PC 12022, in the commission of that robbery.
- Arson in violation of PC 451(a).

Parolees committed to prison for the following felonies, unless specifically included under PC 667.5(c), shall be referred to the Parole Administrator for final discharge decision:

- Robbery.
- Child Molestation.
- Assault with a deadly weapon.
- Rape.
- Large scale narcotics sales.
- Kidnapping.
- Attempts to commit a violent felony listed in PC 667.5(c).

Parolees committed to prison for all felonies not included under the last two bullets above shall be referred to the unit supervisor for final discharge decision.

By law a parolee, unless committed to prison for a "violent felony" under PC 667.5(c), is discharged if the BPT does not order the parolee retained on parole by the 30th day after completion of one, two, three, five, or seven years of continuous parole as appropriate to the commitment category. For example: A parolee sentenced for a non-life offense committed on January 1, 1984, and paroled on June 30, 1986, has a discharge review date of June 30, 1987, and would discharge 30 days later during the 13th month of continuous parole (on July 30, 1987) if a "retain on parole" action were not taken during that 30-day period.

A parolee committed to prison for a "violent felony" under PC 667.5(c) that occurred prior to September 26, 1988, discharges by law upon reaching the maximum Controlling Discharge Date.

81080.5 Discharge to Other Jurisdiction Policy

If a parolee receives a commitment to federal prison, another state's prison, or to a local jurisdiction that exceeds the parole term, the parole agent may submit a report recommending discharge to the other jurisdiction. The following information shall be included in the Discharge Review Report:

- Anticipated minimum and maximum term of incarceration of new term.
- Anticipated length of parole or whether parolee discharges upon release.
- If sentenced to county jail, length of county jail sentence and anticipated release date.
- If parolee was granted probation, whether parolee was placed on formal or informal probation.
- If placed on formal probation, length of formal probation.
- Outstanding restitution obligations.

81080.7.1 Certificate of Rehabilitation Eligibility

Any person convicted of a felony and released from confinement in a California prison who has not been re-imprisoned since release from confinement, and who has waited the specified time period, may file for a Certificate of Rehabilitation.

The period of rehabilitation starts to run upon release to parole or direct discharge from custody.

The period of rehabilitation shall constitute three years residence in this state; plus, four years in case of any person convicted of violating PC Sections 187, 209, 219, 4500 or 12310, or 1672(a) of the Military and Veterans Code, or committing any other offense which carries a life sentence.

Two years in case of any person convicted of committing any offense not listed above.

The petitioner shall not be eligible to file for a Certificate of Rehabilitation until the period of rehabilitation stipulated has passed.

During the rehabilitation period petitioner shall live an honest and upright life, conduct a life of sobriety and industry, make reasonable

effort to satisfy restitution obligations, exhibit a good moral character, and obey all laws.

81080.10 References

Penal Code Sections 187, 209, 213, 219, 261, 264, 288, 667.5, 12022, 12022.5, 12022.7, 12310, 3001, 4500, 4800, 4801, 4802, 4852 thru 4852.19, 4853, and 4854.

California Code of Regulations, Title 15, Division 2, Chapter 2, Sections 2050, 2052, 2515, 2535, 2536, 2537 and 2546 and Division 3, Section 3501.

Military and Veterans Code 1672(a).